

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220623 **DATE:** January 30, 1986
MATTER OF: TLM Berthing, Inc.

DIGEST:

Where a solicitation called for the submission of price proposals for the berthing of two or more ships moored together as well as for one ship moored singly, the agency's award of a contract to berth three vessels was not consistent with the RFP's evaluation scheme because it was made solely on the basis of prices to berth one ship, and the protester's price to berth two ships together was lower than the awardee's. However, because the protester's offer appears to be significantly unbalanced mathematically so that it does not become low until well into the option years, GAO accordingly recommends that the protester be awarded a contract to berth two vessels only if the agency is reasonably assured that the contract period will be extended at least to the third option year.

TLM Berthing, Inc. protests the award of a contract to Tacoma Boatbuilding Company, Inc. under request for proposals (RFP) No. DTMA-91-85-C-50550, issued by the Maritime Administration (MARAD), U.S. Department of Transportation. The procurement is for the acquisition of facilities to berth certain merchant-type vessels assigned to the Ready Reserve Force. TLM essentially complains that the award to Tacoma Boatbuilding is inconsistent with the RFP's established evaluation and source selection scheme. Moreover, TLM contends that Tacoma Boatbuilding was improperly allowed to reduce its proposed price after the closing date for receipt of best and final offers. We sustain the protest on the first ground.

034425

Background

The RFP divided the continental United States into five zones, "A" through "E", in which the vessels were to be berthed. At issue in this case is MARAD's evaluation of proposals for berthing facilities in Zone E, defined in the RFP as the west coast of the United States between Portland, Oregon, and Puget Sound, Washington. The RFP specified the loading ports within each zone, and the loading ports specified for Zone E were Tacoma and Seattle, Washington. (The berthing facilities offered by TLM and Tacoma Boatbuilding are both located in Seattle.)

The RFP further provided that proposals would be evaluated on the basis of: (1) technical acceptability (pass/fail); (2) mean transit time from the proposed berths to the loading ports specified for the zone; and (3) total price for the contract period (one firm year plus four option years). Because MARAD contemplated that more than one vessel would be berthed in any one zone, offerors were asked to submit per diem berthing rates for each of the contract years on the basis of one ship moored singly and also on the basis of two or more ships moored "nested."

MARAD determined that the proposals submitted by TLM and Tacoma Boatbuilding were technically acceptable; the agency did not evaluate the firms' price proposals at this point, but requested the submission of best and final offers. Both firms revised their prices from those originally proposed, and their best and final prices as offered in their proposals were as follows:

TLM

Per Diem Pricing

Contract Year	"One Ship"	"Two Ships"
1	\$4,110	\$4,110
2	600	630
3	600	630
4	600	630
5	600	630

Tacoma BoatbuildingPer Diem Pricing

Contract Year	"One Ship Moored Singly"	"Two or More Ships Moored Nested"
1	\$ 800	\$800 per vessel
2	750	750 per vessel
3	791	791 per vessel
4	834	834 per vessel
5	880	880 per vessel

In accordance with the RFP's stated evaluation scheme, MARAD evaluated the price proposals by first determining the average per diem berthing fee, per ship, which was obtained by dividing by five the total of the rates for the contract years. MARAD then determined the competitive ranking between TLM and Tacoma Boatbuilding by dividing the firms' average per diem berthing fee, per ship, into the mean transit time from the firms' proposed berthing facilities to the Zone E loading ports. Under this formula, which was not spelled out in the RFP, the offeror obtaining the higher numerical result would be selected for the award.

Since the berthing facilities of TLM and Tacoma Boatbuilding are both located in Seattle, the mean transit time factor of 1.4 hours was identical for each firm. The average per diem fee, per ship, offered by the firms was calculated as follows:

Contract Year	<u>TLM</u> One Ship Per Diem Fee	<u>Tacoma Boatbuilding</u> One Ship Per Diem Fee
1	\$4,110	\$800
2	600	750
3	600	791
4	600	834
5	600	<u>880</u>
Total	$\frac{\$6,510}{5} = \$1,302$ average per diem fee	$\frac{\$4,055}{5} = \811 average per diem fee

When these average per diem fees were divided into the mean transit time of 1.4 hours, Tacoma Boatbuilding received the higher numerical ranking:

<u>TLM</u>	<u>Tacoma Boatbuilding</u>
$\frac{1.4}{\$1,302} = .00107$	$\frac{1.4}{\$811} = .00172$

Accordingly, Tacoma Boatbuilding was selected for the Zone E award to furnish berthing facilities for the three vessels to be assigned to that zone. The contract itself has yet to be formally executed, and no performance has begun pending our resolution of the protest.

Analysis

As a general rule, because procuring agencies are relatively free to determine the manner in which proposals will be evaluated, our review is necessarily limited to determining whether the chosen method for evaluating proposals provides a rational basis for source selection and whether the actual evaluation has been conducted in accordance with established criteria. Joint Action In Community Service, Inc., B-214564, Aug. 27, 1984, 84-2 CPD ¶ 228.

In the present matter, although TLM strenuously urges that MARAD's numerical formula for determining the successful offeror by dividing the average per diem fee, per ship, into the mean transit time is mathematically flawed, we need not consider this issue for purposes of our decision because we conclude that, even utilizing this formula, MARAD's source selection decision was not consistent with the RFP's evaluation scheme.

In this regard, TLM does not dispute that Tacoma Boatbuilding is entitled to a berthing contract for one vessel, since Tacoma Boatbuilding's average per diem price, per ship, for a single-vessel mooring was lower than TLM's. However, TLM asserts that MARAD did not calculate the average per diem prices, per ship, for the berthing of two or more vessels moored together, and, if the agency had done so, it would have realized that TLM's average per diem fee, per ship, for two ships was significantly lower. (From the record, it is apparent that TLM's offer to berth multiple vessels was limited to only two vessels, whereas Tacoma Boatbuilding's offer contemplated berthing two or more.)

Our analysis shows that TLM is correct in its assertion. We note that TLM's combined per diem pricing for berthing two vessels together was only marginally higher than its per diem pricing for berthing one vessel (\$30/day higher in each of the four option years). If these

figures are evaluated in accordance with the RFP's scheme to determine the average per diem fee, per ship, it can be clearly seen that TLM's average per diem fee for berthing two vessels together is substantially lower than Tacoma Boatbuilding's average per diem fee to berth two or more vessels:

Contract Years	<u>TLM</u> "Two Ships"	<u>Tacoma Boatbuilding</u> "Two or More Ships Moored Nested"
1	\$4,110	\$800 per vessel x 2 = 1600
2	630	750 per vessel x 2 = 1500
3	630	791 per vessel x 2 = 1582
4	630	834 per vessel x 2 = 1668
5	<u>630</u>	880 per vessel x 2 = <u>1760</u>
Total	\$6,630 = \$1,326 5 average per diem for two ships	\$8110 = \$1,622 5 average per diem for two ships

Accordingly, the average per diem price, per ship, for TLM on the basis of berthing two ships together is \$663 ($\$1326 \div 2$), little more than half the average per diem fee proposed by TLM for berthing one ship. Tacoma Boatbuilding's price is \$811 ($\$1622 \div 2$), the identical average per diem fee the firm proposed for berthing one ship moored singly. Applying the numerical ranking formula utilized by MARAD to determine the successful offeror, TLM's proposal for berthing two ships together receives the higher score:

<u>TLM</u>	<u>Tacoma Boatbuilding</u>
$\frac{1.4}{\$663} = .00211$	$\frac{1.4}{\$811} = .00172$

Consequently, the award decision is objectionable in part because MARAD failed to evaluate the proposals on the basis of berthing two or more ships together as well as on the basis of berthing one ship moored singly. It is a fundamental rule of federal procurement that the basis for an award must be the same, in essential terms, as that on which the competition is conducted. Wheeler Brothers, Inc., et al.--Request for Reconsideration, B-214081.3, Apr. 4, 1985, 85-1 CPD ¶ 388. Under MARAD's own evaluation scheme, we conclude that Tacoma Boatbuilding would be entitled to

the award of a berthing contract for only one ship and that TLM would be entitled to the award of a berthing contract for the remaining two ships assigned to Zone E.

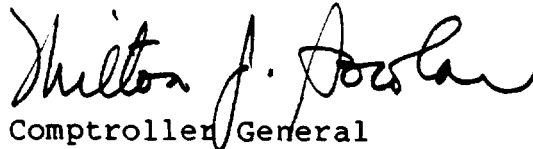
However, we cannot ignore the fact that TLM's offer appears to be significantly unbalanced mathematically; that is, the first year per diem price of \$4,110, when contrasted with the much lower option year prices, seemingly carries a disproportionate share of the total cost of the work plus profit thus exceeding the actual value of the berthing services to be provided in that first year. See Edgewater Machine & Fabricators, Inc., B-219828, Dec. 5, 1985, 85-2 CPD ¶ ____. Although we cannot conclude that TLM's offer is so grossly unbalanced mathematically that its rejection is warranted, see Riverport Industries, Inc., 64 Comp. Gen. 441 (1985), 85-1 CPD ¶ 364, aff'd upon reconsideration, B-218656.2, July 31, 1985, 85-2 CPD ¶ 108, we are concerned that acceptance of the offer may not ultimately result in the lowest overall cost to the government.

In this regard, although TLM's average per diem price, per ship, to berth two vessels together is lower than Tacoma Boatbuilding's when calculated on the basis of a full five-year contract period, the offer in fact only becomes more advantageous in price in the third option year. Hence, if that option should not be exercised, performance by TLM will have resulted in a higher incurred cost than performance by Tacoma Boatbuilding.

Therefore, although we sustain the protest, any recommendation that corrective action be taken must be conditioned by this concern. Accordingly, by separate letter of today, we are recommending to the Secretary of Transportation that TLM be awarded a contract to berth two of the three vessels assigned to Zone E only if the agency is reasonably assured that the contract period will be extended at least to the third option year. Otherwise, notwithstanding the agency's erroneous evaluation of proposals, we believe that Tacoma Boatbuilding should receive the award to berth all three vessels.

To the extent TLM asserts that Tacoma Boatbuilding was improperly allowed to reduce its proposed price after the best and final offer closing date, we need not reach the issue because of our conditional recommendation that corrective action be taken.

The protest is sustained.

for 
Comptroller General
of the United States